

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PEGGY S WOODS

Claimant

APPEAL NO. 10A-UI-12347-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 08/01/10

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's August 24, 2010 determination (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer discharged the claimant for nondisqualifying reasons. The claimant participated in the telephone hearing. Merle Walker represented the employer at the hearing. Sherry Helmkamp, the loan administrative manager, testified on the employer's behalf. During the hearing, Employer Exhibits One, Two, and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2005. The claimant worked as a full-time loan document specialist. At the time of hire, the claimant received a copy of the employer's handbook that informed her about the employer's harassment policy (Employer Exhibit One) and professionalism policy (Employer Exhibit Two). During her employment, the claimant received training on these topics. The claimant understood the employer required all employees to conduct themselves professionally and that the employer did not allow harassment at work.

Prior to July 9, the claimant's job was not in jeopardy. On July 9, the claimant told Helmkamp she may have offended a co-worker when she asked him his age. During this conversation, Helmkamp indicated that if the claimant stayed at her workstation, she might avoid offending a co-worker.

After the claimant's afternoon break, she saw a co-worker who was also a friend talking to another co-worker. He was wearing a big shirt and baggy pants. Since his pants looked like they were about to fall down, she asked her friend if his zipper was zipped. The friend's zipper was zipped and the claimant went back to her desk. Sometime later when her friend walked

past her desk, the claimant asked if her remark had offended him. He laughed and indicated he had not been offended.

On Monday, July 12, when the claimant came to work, Helmkamp had received a report from a supervisor who had learned from someone else about the July 9 incident. Helmkamp talked to the claimant's friend and the employee he had been talking to when the claimant asked him about his zipper. Helmkamp understood the co-worker/claimant's friend had been offended by the claimant's comment and that she had touched his groin.

Helmkamp talked to the claimant about the report she had received. The claimant denied she touched her friend, but admitted she had asked if his zipper was zipped. Based on the employer's understanding that the claimant touched a co-worker's groin, the employer discharged the claimant on July 12 for violating the employer's harassment and professionalism policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's reliance on hearsay information from employees who did not testify at the hearing cannot be given as much weight as the claimant's testimony. Since the claimant's testimony is credible, the findings of fact reflect her version of the events.

A preponderance of the evidence does not establish that the claimant touched a co-worker's groin on July 9. The claimant may have used poor judgment when she asked if a co-worker's zipper was down in the presence of another employee, but this comment does not rise to the level of work-connected misconduct. Therefore, as of August 1, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's August 24, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 1, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw